

Effective 10/1/2015

31A-16-114 Recovery.

- (1) If an order for liquidation or rehabilitation of a domestic insurer is entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer:
 - (a) from any parent corporation, holding company, or person or affiliate who otherwise controlled the insurer, the amount of distributions other than distributions of shares of the same class of stock paid by the insurer on its capital stock; or
 - (b) any payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment made by the insurer or its subsidiary to a director, officer, or employee, when the distribution or payment pursuant to Subsection (1)(a) or this Subsection (1)(b) is made at any time during the one year preceding the petition for liquidation, conservation, or rehabilitation, as the case may be, subject to the limitations of Subsections (2), (3), and (4).
- (2) A distribution may not be recovered if the parent or affiliate shows that when paid the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.
- (3) A person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time the distributions were paid shall be liable up to the amount of distributions or payments under Subsection (1) that the person received. A person who otherwise controlled the insurer at the time the distributions were declared is liable up to the amount of distributions that would have been received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.
- (4) The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.
- (5) To the extent that any person liable under Subsection (3) is insolvent or otherwise fails to pay claims due from the person, its parent corporation, holding company, or person who otherwise controlled it at the time the distribution was paid, are jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it.

Enacted by Chapter 244, 2015 General Session